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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 SEAN SEWARD,

16 Plaintiff,

17 v.

18 AT&T MOBILITY SERVICES,
19 LLC, a Delaware Limited Liability
20 Company; and DOES 1-10, Jointly
21 and Severally,

22 Defendant.

Case No.: 3:12-CV-00979-H-RBB

JOINT NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT AND
DISMISSAL WITH PREJUDICE

Judge: Honorable Marilyn L. Huff
Courtroom: 15A

Action Filed: April 19, 2012

1 Plaintiff Sean Seward and Defendant AT&T Mobility Services, LLC
 2 (collectively referred to as the “Parties”), by and through their undersigned
 3 attorneys, hereby notify the Court of their settlement of this case subject to and
 4 conditioned on the relief sought herein. Specifically, the Parties respectfully
 5 request entry of an order providing:

6 1. For approval of the settlement of the action as negotiated between
 7 the Parties as set forth in the Parties’ settlement agreement; and

8 2. Dismissal of this action with prejudice, with the Court reserving
 9 jurisdiction to enforce the settlement agreement.

10 APPROVAL OF THE SETTLEMENT AGREEMENT

11 This case involves claims for overtime pursuant to the Fair Labor
 12 Standards Act, 29 U.S.C. §§201, *et seq.* (“FLSA”). The case involves numerous
 13 contested issues of fact and law concerning the Plaintiff’s claims. Defendant
 14 denies and disputes liability, damages entitlement and calculations, and the
 15 timeliness of all or part of many of Plaintiff’s claims.

16 More generally, this case finds its genesis in *Zivali v. AT&T Mobility LLC*,
 17 a nationwide FLSA “off the clock” collective action that was litigated in the
 18 Southern District of New York. *See Zivali v. AT&T Mobility, LLC*, 784 F. Supp.
 19 2d 456 (S.D.N.Y. 2011). There, the parties zealously litigated certification and
 20 merits issues for more than two years. On May 11, 2011, Judge Rakoff
 21 decertified the action and dismissed the opt-in plaintiffs without prejudice. *Id.* at
 22 470. The plaintiff in this case is a *Zivali* opt-in plaintiff.

23 Plaintiff in this case through his undersigned counsel, and Defendant
 24 through its authorized representative and counsel of record, have reached a
 25 confidential settlement of this matter, as discussed in the settlement agreement.
 26 At all relevant times in this action, the Plaintiff has been represented by the
 27 undersigned attorney and has had the benefit of their counsel and advice.
 28

1 The Parties' confidential settlement agreement reflects a reasonable
2 compromise of the parties' many disputed issues. The agreement fairly and
3 reasonably compromises and takes into account each party's interest, benefits,
4 and rights, pursuant to the criteria and policy considerations set forth in *Lynn's*
5 *Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982).

6 The principal reason for the confidentiality obligations associated with this
7 settlement agreement is to prevent any one case – which presents inherently
8 individualized claims – from creating unrealistic or false expectations on the part
9 of the hundreds of other former *Zivali* plaintiffs whose cases are pending around
10 the country. Such expectations could make it more difficult to efficiently resolve
11 those cases, whether by litigation or settlement.

12 The settlement agreement is, however, conditioned on the Court's
13 approval of the settlement and subsequent dismissal of this action with prejudice.
14 Therefore, the Parties request that the Court review the settlement agreement,
15 which has been provided to the Court as part of an application to seal the
16 document and maintain its confidentiality.

17 SETTLEMENT PROCESS AND TERMS

18 The Parties reached a settlement of this action after conducting discovery
19 on Plaintiff's claims and Defendant's defenses. Such discovery included written
20 interrogatories, document requests, and requests for admissions. Defendant
21 provided Plaintiff with Plaintiff's employment records, including time records,
22 personnel file, company policies, and training materials. The Parties, through
23 their respective counsel, met and conferred numerous times regarding discovery
24 requests and responses and the possibility of settlement.

25 After the Parties had an opportunity to assess the provided discovery, the
26 Parties began to engage in settlement negotiations. The settlement was reached
27 after several months of negotiations and represents an arms-length agreement
28 between the Parties. The settlement resolves Plaintiff's claims under the Fair

Labor Standards Act, and provides a release of any claims relating to Plaintiff's employment with AT&T Mobility Services, LLC. The Parties agree that the settlement is fair and represents an equitable settlement of Plaintiff's claims.

DISMISSAL OF THE LITIGATION

Finally, the Parties request that the Court dismiss the action upon approval of the settlement agreement. A proposed order is submitted under separate cover for the Court's convenience for: (1) approval of the settlement agreement; and (2) dismissal of the litigation.

CONCLUSION

The Parties hereby respectfully move for approval of the settlement and for entry of order dismissing this action with prejudice.

Respectfully submitted,

Dated: June 11, 2013

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on June 11, 2013, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF system which will send
4 notification of such filing to the e-mail addresses denoted on the Notice of
5 Electronic Filing.

6 I certify under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct. Executed on June 11, 2013.

8
9 s/Alreen Haeggquist
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